

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the Telecommunications)	
Act of 1996: Telecommunications Carriers')	
Use of Customer Proprietary Network)	CC Docket No. 96-115
Information and other Customer Information)	
)	
Petition for Rulemaking to Enhance Security)	RM-11277
And Authentication Standards for Access to)	
Customer Proprietary Network Information)	

To: The Commission

**REPLY COMMENTS
OF THE
ENTERPRISE WIRELESS ALLIANCE
AND THE USMSS, INC.**

The Enterprise Wireless Alliance ("EWA" or "Alliance"), together with the USMSS, Inc. ("USMSS"), an affiliated entity of the Alliance, in accordance with Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its reply comments in the above-entitled proceeding.¹ As stated in its comments, EWA represents a broad alliance of business enterprise users, communications service providers, radio dealers and technology manufacturers, all of which use or provide wireless telecommunications products or services. Many of the Alliance's members operate Part 90 private radio systems used for internal communications that are not subject to the customer proprietary network information ("CPNI") rules.² Other EWA members and a significant percentage of USMSS members operate small commercial systems serving primarily the dispatch market, although some have ancillary interconnection capability.

¹ *Implementation of the Telecommunications Act of 1996 Telecommunications Carriers' Use of Customer Proprietary Network Information and other Customer Information*, Notice of Proposed Rulemaking, CC Docket No. 96-115, RM-11277 (rel. February 14, 2006) ("NPRM").

² EWA/USMSS Comments at 2.

The operators of these systems all are classified as “telecommunications carriers” and thereby subject to CPNI requirements. However, as described in the EWA/USMSS comments and reaffirmed herein, these entities do not collect the type of data contemplated by the existing and proposed CPNI rules. Based on the comments filed in this proceeding, certain other similarly situated telecommunications carriers such as those in the paging industry agree that the Commission should limit the scope of its CPNI rules to avoid imposing unnecessary burdens on carriers whose activities do not trigger the concerns that underlie the CPNI obligations such as the majority of EWA and USMSS members.³ No commenter argued in favor of applying CPNI rules universally, irrespective of substantive distinctions among categories of telecommunications carriers. Thus, the Alliance and the USMSS agree with those parties that urged the Commission to ensure that its CPNI rules target only those telecommunications carriers that have access to the type of proprietary customer information that Congress and the FCC have determined is vulnerable to and should be protected from unauthorized use.

I. Non-Interconnected, Dispatch-Only Systems

As noted above and as described in the comments, many members of the Alliance and the USMSS operate Part 90 commercial, two-way, dispatch-only systems. These systems do not interconnect with the Public Switched Network (“PSN”) at all. Customers have no access to the telephone network. Operators of the radio units on these systems, whether mobile, portable, control or base stations, communicate directly with one another exclusively through radio transmissions between mobiles and portables in the field and a console in an office. Because the radios are incapable of accessing the PSN, customers of these systems do not generate telephone records and seemingly fall outside of the intended ambit of the CPNI protection provisions. Nonetheless, because the service is provided by a telecommunications carrier, they arguably are subject to the CPNI obligations.

³ See generally Comments of the American Association of Paging Carriers (“AAPC”).

The minimal customer information that the carrier does collect is that which is needed to generate an accurate invoice. Typically, this consists of the number of radios each customer has in service and the address to which bills should be sent. While the number of operational units for which each fleet is billed theoretically could be considered data that identifies “the quantity” and “amount of use” protected under CPNI regulations,⁴ dispatch-only customers commonly are billed on a flat, monthly per-unit basis. There is no need to and services providers do not collect data about the amount, time or duration of transmissions by each unit since that information is not germane for billing purposes.

Moreover, as explained in the EWA/USMSS comments, these types of dispatch-only licensees have no “cross-marketing” arrangements whereby they sell or exchange their limited customer information to affiliates or to third parties.⁵ The mailing addresses and number of units of the business, industrial and governmental fleets that operate on these systems have no commercial value. To the best of EWA’s knowledge, this data has never elicited any third party interest. Ultimately, therefore, these carriers have no CPNI to protect as that term is intended by Congress and the FCC.

AAPC stated that the “issues raised by the Commission simply are not germane to paging carriers.”⁶ Likewise, the CPNI rules, both as currently defined and as contemplated in this NPRM, are inapplicable to Part 90 dispatch-only systems. Telecommunications carriers that operate such systems should be exempt from CPNI obligations.

II. Dispatch Systems with Ancillary Interconnection

A small - and shrinking - percentage of Part 90 dispatch systems also offer ancillary interconnection capability. A fleet typically would consist of primarily dispatch-only units, while the radios used by the owner and perhaps a select number of managers also would have the

⁴ 47 U.S.C. § 222(h)(1)(A)

⁵ EWA/USMSS Comments at 4

⁶ AAPC Comments at 3.

interconnect function. Generally speaking, it is the telecommunication provider itself, the system licensee, that is the “subscriber” to the PSN. The Part 90 licensee subscribes to the telephone service as a business customer, not as a co-carrier, and provides over dial numbers to radio units for its customers’ use.⁷ In some instances, the carrier uses airtime billing for interconnection service and would maintain information about call duration, but not other data of a proprietary nature. Other systems bill even interconnected service at a flat additional monthly rate, in which case no information of the type contemplated by the CPNI rules would be collected. In sum, these carriers do not collect information regarding the frequency, duration or timing of calls except as needed to generate an invoice. They do not routinely collect location and destination information from their customers since that data is not relevant for billing purposes.

This ancillary interconnection feature used to be more prevalent before cellular service became widely available. Although the interconnection on these systems was and remains technically unsophisticated, it did provide a useful tool for small businesses and still does in those areas of the country which do not yet have extensive cellular coverage. However, it would never be confused with cellular service. As noted in the EWA/USMSS comments, interconnection on primarily dispatch systems does not use SS7 signaling. In many instances, the service does not even include direct dial access lines.⁸

Business, industrial and governmental users who want cellular-like service would not be satisfied with the interconnect capability on these systems. As the number of units with ancillary interconnect capability continues to decrease in the face of expanding cellular coverage, the cost of providing this option quickly begins to outweigh the resulting revenue. Thus, Part 90 dispatch operators providing service in and around urban areas and connecting highways where

⁷ EWA/USMSS Comments at 5.

⁸ *Id.*

cell service is available have abandoned this feature entirely. It remains available typically in more rural areas where it may be the only option for wireless access to the PSN.

The EWA/USMSS comments suggested that the FCC use the “covered carrier” definition as the basis for distinguishing between telecommunications carriers with and without CPNI obligations.⁹ This definition generally has been used to differentiate consumer-oriented, cellular-like systems from those with much more limited capacity and coverage that do not compete with cellular offerings. While that delineation is not directly applicable to the public interest considerations in the CPNI context, the Commission’s analysis of this issue in respect to number portability is instructive.

In that proceeding, the Commission used the “covered carrier” definition to carve out an exemption for interconnected service providers that did not satisfy that definition. It noted that these primarily dispatch systems typically used overdialing, as described above, to establish interconnection with the PSN. Having determined that their customers did not have telephone numbers to port, the Commission considered whether to require “traditionally configured SMR systems to reconfigure their systems so that every interconnected customer has its own public telephone number.”¹⁰ It rejected that approach in concluding the following:

Indeed, to require such reconfiguration would essentially force traditional SMR customers to utilize a type of service that presumably they have elected not to use, as these customers could have subscribed to cellular and PCS service if they wished to have their own public telephone numbers.¹¹

A decision to impose CPNI obligations on primarily dispatch systems would have a similarly adverse public interest impact. The additional cost associated with compliance, like the cost of requiring direct dial capability in the number portability context, will trigger discontinuance of the interconnect option on the already shrinking number of systems in rural

⁹ *Id.* at 5-8.

¹⁰ Telephone Number Portability, *Second Memorandum Opinion & Order on Reconsideration*, 13 FCC Rcd 21204, 21229 (1998).

¹¹ *Id.*

markets that have maintained it as the **only** means of wireless PSN access. The customers that currently enjoy this capability will lose it without having access to an alternative offering. Their communications choices will be diminished, not expanded, by virtue of these regulations, a result that is contrary to the Commission's overarching intention of promoting choice in rural as well as urban America.

In this regard, the Alliance and USMSS agree with Sprint Nextel that the Commission should adopt narrowly tailored regulations that recognize the wide differences that exist in network and corporate infrastructure when promulgating new CPNI regulations.¹² Sprint Nextel indicated that "new carrier regulations would be unworkable given the array of carrier networks, technologies, divisions, affiliates, *financial abilities*, and customer relationships," and that "it is unlikely that any regulation would uniformly solve the problem for all carriers and consumers."¹³ Sprint Nextel also expressed concern that a complex array of costly, overly burdensome and ineffective new rules may result, requiring carriers to devote considerable resources to comply with the new regulations, while losing focus on the overall goal of protecting CPNI from unauthorized disclosure.¹⁴ In summary, Sprint Nextel noted that "one size fits all solutions are unlikely to prove workable for an industry in which the nature of the carrier-customer relationship differs dramatically depending on the type of service at issue. . . ."¹⁵ EWA and USMSS agree. For many of the same reasons that their members generally are exempt from other Title II-type regulations,¹⁶ EWA and USMSS believe that these licensees also should be exempt from CPNI regulations.

¹² Comments of Sprint Nextel at 4

¹³ *Id.* at 3-4 (emphasis added)

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 6.

¹⁶ *See e.g.*, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Second Report and Order*, 19 FCC Rcd 16964 (2004).

III. The CPNI Rules Should be Tailored to Apply only to Systems Where Telephone Data Considered Proprietary by Customers is Collected

Dispatch systems operate on various frequency bands allocated by the Commission to the Part 90 services. They are licensed in UHF, VHF and T-Band (470-512 MHz), as well as in the 800 MHz and 900 MHz bands. Attached as Exhibit A is a summary of Part 90 dispatch systems that potentially would be affected by the Commission's CPNI regulations.¹⁷ There are almost 35,000 distinct call signs licensed as a community repeater or private carrier system.¹⁸ EWA and USMSS believe that it is not the intent of Congress or the FCC, nor should it be, to cast such a wide regulatory net and apply CPNI regulations to each of these carriers. Clearly, those that are not interconnected with the PSN and therefore collect no telephone data-related information at all should be exempt from these obligations. Even carriers whose systems offer ancillary, interconnect capability do not collect the type of information contemplated by the CPNI rules.

The Alliance and USMSS do not believe that dispatch-only systems and dispatch systems with ancillary interconnection service were intended to be subject to CPNI regulations. These licensees cannot support the substantial technical and financial responsibilities of current CPNI regulations and those that would result from adoption of the proposals in the instant proceeding. As Crown Castle International Corp. noted, the revisions proposed by the Electronic Privacy Information Center are overly complicated and create a significant administrative burden on small land mobile radio systems.¹⁹ Therefore, the Alliance believes that the Commission should exempt from both existing and proposed CPNI rules all Part 90 carriers that do not meet the definition of "covered carrier."

¹⁷ It is not possible to determine how many of these systems either have abandoned interconnection entirely for the reasons described herein.

¹⁸ Not shown in Exhibit A are the FB8 call signs, which represent a mixture of private and commercial licensees. EWA and USMSS appreciate that call signs do not represent individual licensees, but this number represents a substantial number of systems and licensees that would be adversely impacted by the applicability of CPNI rules.

¹⁹ Comments of Crown Castle International Corp. at 2. *See also*, Comments of InSite Wireless LLC at 4.

The Alliance strongly believes that the FCC should adopt a “covered carrier” approach for CPNI purposes. If the Commission is concerned that doing so might exempt entities that properly should be subject to those regulations, the Alliance suggests that the FCC exempt all telecommunications carriers operating systems authorized on Part 90 channels that: i) are not interconnected with the PSN at all; or 2) are interconnected, but do not satisfy the “covered carrier” definition. By limiting the exception to Part 90 telecommunications carriers, the Commission need not be concerned that it will create a loophole for providers offering the type of telephone services in which CPNI is collected and, thus, potentially subject to abuse. For all of the reasons detailed above, the small number of Part 90 licensees who provide interconnected service, but are not considered “covered carriers,” should be exempt from the obligation.

At the minimum, if the FCC is not prepared to exempt these entities entirely, the Alliance and the USMSS urge the Commission to adopt Crown Castle’s “safe harbor” approach to CPNI compliance for entities that are not classified as “covered carriers.”²⁰ It should require only a limited CPNI certification from such licensees by allowing them to certify that they: (1) do not collect call detail records, (2) do not use CPNI for any purpose other than permitted use under Section 64.2005 of the Commission’s rules and (3) do not disclose CPNI to third parties except as permitted under Section 64.2005. This would provide the Commission with an affirmative confirmation that these carriers are operating in conformance with the rules and provide a basis for enforcement activity in the highly unlikely event that any such entity is believed to have violated those requirements.²¹

IV. Conclusion

The CPNI rules clearly are intended to protect the privacy of information related to the provision of telephone service. An unintended consequence of the broad scope of the

²⁰ Crown Castle Comments at 2-4.

²¹ EWA/USMSS Comments at 7.

telecommunications carrier definition, coupled with the less than precise definition of CPNI, is the imposition of these regulations on carriers that do not offer interconnected service at all or offer very limited ancillary interconnection service to their customers. As noted in Exhibit A, there are many thousands of small operators around the nation that will be adversely affected. Therefore, EWA and USMSS recommend that the Commission adopt rules consistent with the recommendations contained herein.

Respectfully submitted,

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EXHIBIT A

Class	VHF	UHF	TV	800	900
	Call Signs	Call Signs	Call Signs	Call Signs	Call Signs
FB4	142	7800	100	4	0
FB4C	9	513	4	1	2
FB6	869	7972	1264	1	0
FB6C	35	129	6	51	0
FB7	2	40	0	10	0
FB7C	0	7	0	0	0